HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1285/05 (S/S)

Smt. Mandodari Devi

VS

State of U.P. and others.

Approved for reporting

~~Not approved for reporting~~

Date of decision: 13.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NANITAL

WRIT PETITION NO.1285 (SS) OF 2005

Smt. Mandodari Devi,
W/o late Shri Darban Singh Negi,
R/o Village Raduwa, Patwari Circle Raduwa (Chandnikhal),
Tehsil Pokhri, District Chamoli. .....Petitioner.

Versus

1. State of Uttar Pradesh,
   through Secretary Basic Education, Civil Secretariat,
   Uttar Pradesh, Lucknow.
2. Director of Education,
   Education Pension Section-II, Uttar Pradesh,
   Allahabad.
3. Junior Director,
   State Employees Group Insurance Directorate,
   22, Station Road, 4th Floor, 6th Level,
   Uttar Pradesh, Lucknow.
4. District Education Officer,
   Pauri Garhwal. .....Respondents.

Sri R.P. Nautiyal, Advocate for the petitioner.
Learned Standing Counsel for the state.

Dated: 13.02.2006

Hon'ble Rajesh Tandon, J.

Heard Sri R.P. Nautiyal, learned counsel for the petitioner and learned Standing Counsel for the State.

By the present writ petition, the petitioner has prayed for a writ of Mandamus commanding the respondent authorities to pay the amount of group insurance and 10% of amount of dues (gratuity) of petitioner's late husband Darban Singh Negi, along with 12% per annum compound interest form the date of death of Darban Singh Negi i.e. from 02.08.1991 up to the date of actual payment.

Brief facts giving rise to the present writ petition are that late Shri Darban Singh Negi was working as Assistant Basic Education Officer under the District Basic Education Officer,

Pauri Garhwal. He died in harness on 02.08.1991 in a road accident while in service.

After the death of her husband, petitioner requested the respondent authorities to pay the amount of group insurance of her late husband Darban Singh Negi. The respondent authorities sent a bank draft no. 0/A29/50-0303770 to the extent of Rs 34,274.00, which was received by the petitioner on 7th July, 1992 but since the name of the petitioner's husband was wrongly shown in the bank draft as Darshan Singh in place of Darban Singh Negi, the same was returned on 21.12.1992 and till today, the same has not yet been sent to the petitioner with correct name although the petitioner has requested the authorities for several times.

A counter affidavit has been filed by the respondent no. 3 and in paragraph 5 of the counter affidavit it has been admitted that the amount has to be paid was to the extent of Rs. 34,274/- and the department is required to issue a cheque to the concerned employee. Relevant paragraphs 5 and 6 of the counter affidavit are quoted below:-

"It is further submitted that the answering respondent has issued a cheque of Rs. 100,920/- bearing cheque no. 27/1256 dated 1.5.1992 which was received by the department of Directorate of Education U.P. Allahabad and the said amount has been transferred to the account of Education Department. The amount of Rs. 100,920/- was to be disbursed amongst three employees of the education department in which the husband of the petitioner was also included. The amount is to be paid to the petitioner's husband was Rs. 34,275/-.

6. That after the amount is received by the Education Department, the said department is required to issue a cheque from its own account to the concerned employee/beneficiary."

Similar averments have also been made by the respondent no. 4 District Education Officer, Pauri Garhwal. Relevant paragraph 7 is quote below:-

"7. That the contents of para 8 & 9 of the writ petition are admitted. It is stated that the answering respondent no. 4 had informed the petitioner vide its letter dated 15.9.2003 that the Director of Education Pension Section-2 Allahabad by vide letter no. Pension/2 1776/2003-04 dated 2/8/2003 had informed this office that the funds has been demanded for the Government and the amount group insurance has been embezzled and after the receipt of funds of petitioner will be paid. The inquiry against the concerned persons has not been finalized yet as per the said letter dated 2/8/2003 therefore, after the enquiry and the approval order of the respondent no. 1, 2 & 3 the respondent no. 4 will be able to made payment of amount of Group Insurance and 10% of remaining amount of G.P.F. of her dated husband, to the petitioner."

A perusal of the counter affidavit shows that the respondents have admitted this fact that the petitioner has to be paid the amount but surprisingly the death occurred in the year, 1991 and the payment made in year, 1992 in the wrong name of husband of the petitioner has not yet seen the light of the day although 14 years have already passed.

The inaction on the part of the respondents to pay the amount has compelled the petitioner to file Writ Petition under Article 226/227 of the Constitution of India.

A poor lady who has lost her husband in a road accident has been deprived of his valuable rights to get the amount although have passed 14 years. It is surprising that the department is exchanging the pleadings and admitting the liability but till today the payment has not been made. The

counter affidavit has been filed as as back in year, 2005 but the payment has not been made in the correct name.

In view of the above, it is a fit case, where penal interest has to be awarded for the payment of the amount and as such the respondents are directed to pay the amount by 15th of March, 2006 with penal interest at the rate of 15% per annum. In case the amount is not paid by 28th of March, 2006, the petitioner shall be entitled to get the amount with interest at the rate of 18% per annum.

A writ of mandamus is issued directing the respondent authorities to pay the amount of group insurance as well as 10% of the dues towards gratuity, which were due to the husband of the petitioner as directed above.

Writ petition is allowed accordingly. No order as to costs.

(Rajesh Tandon, J.)

13.02.2006
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